

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARRYL BOYD,

Plaintiff,

v.

THE CITY OF BUFFALO, *et al.*,

Defendants.

22-CV-519 (LJV) (JJM)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN WALKER, JR.,

Plaintiff,

v.

THE CITY OF BUFFALO, *et al.*,

Defendants.

22-CV-520 (LJV) (JJM)

DECLARATION OF TIMOTHY W. HOOVER IN SUPPORT OF PLAINTIFFS' MOTION FOR AN UNSEALING ORDER

TIMOTHY W. HOOVER, pursuant to 28 U.S.C. § 1746, states and declares under penalty of perjury that the following is true and correct:

1. I am an attorney at law duly licensed to practice in this Court, and I am a partner in the law firm of Hoover & Durland LLP. Along with the Law Offices of Joel B. Rudin, P.C. and Wilmer Cutler Pickering Hale and Dorr LLP, my firm is counsel for Plaintiffs Darryl Boyd and John Walker, Jr.

2. I am fully familiar with the facts and circumstances described below, and make this Affirmation in support of Plaintiffs' motion for the issuance of an order (i) unsealing records in *People v. Tommy Rollins*, Ind. No. 82-1064 (Sup. Ct. Erie Cty.) solely for use by the parties in the instant actions, and (ii) directing the Erie County Clerk's Office to provide a complete copy of the file in the *Rollins* case to counsel for

Plaintiffs.

3. A true and correct copy of the Order to Show Cause issued by The Honorable Susan Eagan on October 30, 2023, together with the accompanying Affirmation of Timothy W. Hoover, executed on October 24, 2023, with Exhibits A-N, is attached hereto as **Exhibit 1**.

4. A true and correct copy of the County of Erie's response to the Order to Show Cause, dated November 2, 2023, is attached hereto as **Exhibit 2**.

5. A true and correct copy of Plaintiffs' Reply Affirmation in support of their application, executed on November 8, 2023, is attached hereto as **Exhibit 3**.

6. A true and correct copy of the Decision and Order of Judge Eagan dated November 14, 2023 is attached hereto as **Exhibit 4**.

7. A true and correct copy of an Unsealing Order in *Negron v. City of New York*, 18-CV-6645 (NGG) (SMG) (E.D.N.Y. Nov. 22, 2019) is attached hereto as **Exhibit 5**.

8. A true and correct copy of *Sexual Attack Proven*, an article in the Buffalo Courier Express, at A-3 (Aug. 4, 1982), is attached hereto as **Exhibit 6**.

9. A true and correct copy of *Teen Pleads Innocent to Murder*, an article in the Buffalo Courier Express, at A-3 (Sept. 16, 1982), is attached hereto as **Exhibit 7**.

10. A true and correct copy of *Suspects in Killing of Couple Get Hearing*, an article in the Buffalo Courtier Express, at A-3 (Aug. 10, 1982), is attached hereto as **Exhibit 8**.

11. A true and correct copy of *Boy Admits Lookout Role in Killings*, Buffalo Courier Express, at A-3 (July 31, 1982), is attached hereto as **Exhibit 9**.

12. On September 13 and September 19, 2023, Plaintiffs' counsel asked counsel for the County of Erie if the County and DA's Office would consent to Plaintiffs' motion to unseal the Rollins case file.

From: Joel B. Rudin
To: Brian C. Mahoney; David Rudin; Sahasrabudhe, Peter A.; Russ III, Hugh M.
Cc: Perry, Adam W.; Jennifer C. Persico; Alexander W. Eaton; Serena M. Kemnitzer; Thelo Coleman; WH Buffalo 5 Internal Team; Timothy Hoover; Spencer Durland; Firsenaum, Ross; Perio, Rynne; Hanft, Gideon A.
Subject: RE: Boyd and Walker v. City of Buffalo et al.
Date: Wednesday, September 13, 2023 5:19:11 PM
Attachments: [image001.png](#)

Dear Brian, Jennifer and Alex,

I'm writing to request your client County of Erie's consent, and that of the D.A.'s office, to the unsealing of the Supreme Court file in the Tommy Rollins case, *People v. Rollins*, Ind. No. 82-1064. This is the case I already questioned John Montondo and the 30(b)(6) witness, John Regan, about at their depositions. It is relevant to our *Monell* claim because it concerns alleged misconduct of former Det. Montondo and then Homicide Chief Leo Donovan in coercing statements from a young Black suspect similar to the conduct we allege in this case. Justice Kasler castigated the police conduct in suppressing Rollins' statements and then dismissed the case. We elicited at the depositions that neither Montondo nor Donovan apparently were disciplined for their alleged misconduct.

We have obtained the court records of the codefendant, Shelby Davis, Jr., because he was convicted, but the records do not include the suppression hearing transcript, which is sealed under CPL 160.50. Nor have we been able to obtain the underlying motion papers.

Because the matter is sealed, we need to make an unsealing application. We request the D.A.'s and Erie County's consent to this application.

Please let us know your position by Monday if possible. I appreciate your consideration.

Regards,

Joel

(Ex. 1-N.)

From: David Rudin <David@rudinlaw.com>
Sent: Tuesday, September 19, 2023 11:34 AM
To: Joel B. Rudin <jrudin@rudinlaw.com>; Brian C. Mahoney <bmahoney@lippes.com>; Sahasrabudhe, Peter A. <Psahasra@hodgsonruss.com>; Russ III, Hugh M. <hRuss@hodgsonruss.com>
Cc: Perry, Adam W. <APerry@hodgsonruss.com>; Jennifer C. Persico <ipersico@lippes.com>; Alexander W. Eaton <aeaton@lippes.com>; Serena M. Kemnitzer <skemnitzer@lippes.com>; Thelo Coleman <thelo@rudinlaw.com>; WH Buffalo 5 Internal Team <WHBuffalo5InternalTeam@wilmerhale.com>; Timothy Hoover <tHoover@hpoverturland.com>; Spencer Durland <sdurland@hpoverturland.com>; Firsenaum, Ross <Ross.Firsenaum@wilmerhale.com>; Perio, Rynne <Rynne.Perio@wilmerhale.com>; Hanft, Gideon A. <Gideon.Hanft@wilmerhale.com>
Subject: RE: Boyd and Walker v. City of Buffalo et al.

Dear Brian, Jennifer, and Alex,

I'm writing to follow up on the below email from last week. Please let us know if you'll consent to our application to unseal the court file in the Tommy Rollins case.

Thanks,

1

David

(Ex. 2-B.)

13. Counsel for the County never responded to these two requests.

14. On October 24, I submitted an application and proposed order to show cause in New York State Supreme Court, Erie County, on behalf of Darryl Boyd and John Walker, Jr. to unseal *People v. Rollins* solely for use in Plaintiffs' federal civil rights actions.

15. On October 30, Judge Susan Eagan issued an order to show cause to the Erie County District Attorney's Office ("ECDA") why an order should not be entered granting the unsealing relief requested by Plaintiffs. Judge Eagan excused service on Mr. Rollins for the reasons set forth in the application for the Order to Show Cause.

16. Although the County had ignored Plaintiffs' requests for consent, and although the unsealing application was directed to the People of the State of New York (represented by the ECDA, not counsel for the County here), I emailed a courtesy copy of the unsealing application to Lippes Mathias LLP on October 31.

17. The County's counsel provided the application to Hodgson Russ LLP, counsel for the City, but did not respond to my email.

18. The ECDA did not respond to the Order to Show Cause.

19. Instead, on November 2, Lippes Matthias LLP responded on behalf of the Non-Party County. Its opposition claimed, among other things, that by serving the ECDA as ordered by Judge Eagan, Movants had violated the ethical prohibition on communicating with represented parties. The County did not identify any reason why Tommy Rollins's interest in suppressing the already publicly-known and available facts of his much-publicized case outweighs Plaintiffs' interests in redressing civil-rights violations similar to those Rollins sustained.

20. On November 8, I filed a reply on behalf of Plaintiffs.

21. On November 9, Judge Eagan heard argument on the application in an open, public courtroom at the Erie County Court Building, 25 Delaware Avenue, Buffalo, New York, and called the case for argument by its caption, *People v. Tommy*

Rollins, with other attorneys and the general public in the audience. The County did not object to the Court's calling of the case, nor did the County object to argument taking place in open court. The ECDA, whose offices are in the same building as Judge Eagan's courtroom, did not appear. Neither did the City. The non-party County was represented by its counsel in this action.

22. Judge Eagan took the application under advisement.

23. On November 16, Judge Eagan issued a decision denying the application to unseal. Judge Eagan concluded that she did not have the authority to unseal the case under state law. She did not address Plaintiffs' argument, and the many cases holding, that federal discovery laws supersede state sealing laws.

WHEREFORE, for the reasons set forth in the accompanying Memorandum of Law, the Court should grant Plaintiffs' motion and issue an order unsealing the records in *People v. Tommy Rollins*, Ind. No. 82-1064 (Sup. Ct. Erie Cty.), on a partial, limited, non-public basis only for use by the parties in these actions pursuant to the existing protective order, and directing the Erie County Clerk's Office to provide a complete copy of the file in the *Rollins* case to counsel for Plaintiffs, along with any alternative or additional relief the Court deems just and proper.

DATED: Buffalo, New York
December 11, 2023

HOOVER & DURLAND LLP
Attorneys for Plaintiffs Darryl Boyd and John Walker, Jr.

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Timothy W. Hoover
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